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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,799	03/30/2005	Lec Ann Olson	2866(203-3509)	5362

7590 03/26/2007
Paul R Audet Senior Patent & Trademark Counsel
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EXAMINER

LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/529,799	OLSON ET AL.	
	Examiner	Art Unit	
	Michelle Lopez	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/19/05, 5/9/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 1-25 and 26-41 been renumbered 1-20 and 21-36 respectively.

Claims 1-20 have been canceled.

New claims 21-36 have been added.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-25, 30, 32-34, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. 5,312,023.

Green discloses a surgical stapler comprising a tool assembly including a cartridge assembly 58 having a plurality of staples and an anvil assembly 56, the anvil assembly being movable in relation to the cartridge assembly between open and approximated positions, a shaft 60, and an intermediate pivot member pivotally secured to the tool assembly about a first pivot axis (as shown in Fig. 1 and the Abstract) and pivotally secured to the shaft about a second pivot axis, the first pivot axis being substantially orthogonal to the second pivot axis as shown in Figs.

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52-54 (claim 21); a dynamic clamping member as shown in Fig. 22 positioned to translate through the tool assembly to eject the plurality of staples from the cartridge (claim 22); wherein the plurality of staples are aligned in a plurality of linear rows as shown in Figs. 17-18 (claim 23); a clamping collar 400 as recited (claim 24); a sled 290 which is movable with the dynamic clamping as recited (claim 25) and has an angled surface (claim 30).

With respect to claims 32-34, Green discloses a tool assembly comprising an anvil and cartridge assembly 56,58, the cartridge having a plurality of staples and being movable in relation to the anvil between an open position and an approximated position as shown in Figs. 29-30, a tissue gap in the approximated position, a clamp collar 400 as recited, and a dynamic clamping member as recited as shown in Fig. 22 (claim 32); the staples are aligned in a plurality of linear rows (claim 33); and a sled 290 as recited (claims 34 and 36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-29, 31, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. 5,312,023 in view of Milliman 5,865,361.

Green discloses a surgical stapler with a dynamic clamping member as shown in Fig. 22, but does not disclose wherein said dynamic clamping member includes a first mechanical interface which sliding engages the anvil assembly and a second mechanical interface which sliding engages the cartridge assembly, the first and second mechanical interfaces being in

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substantially vertical registration relative to one another. However, Milliman teaches a surgical stapler comprising a tool assembly 17 including an anvil 20, a cartridge 18, and a dynamic clamping member as recited (see Figs. 45,49,51-52) for the purpose of uniformly maintaining a gap between tissue contacting the anvil and the cartridge during stapling. It would have been obvious to one having ordinary skill in the art to have provided Green's dynamic clamping member with a first and second mechanical interfaces as taught by Milliman to maintain a uniform gap between tissue contacting the anvil and the cartridge during stapling.

Milliman also shows wherein the first mechanical interface includes a pin 286 which translates within a slot disposed within an interior of the anvil assembly as shown in Figs. 51-52 (claim 27); wherein said slot includes a generally T-shaped cross section as shown in Fig. 21 (claim 28); wherein the second mechanical interface includes a flange 285 as recited (claim 29).

With respect to claim 31, Milliman also teaches wherein the tool assembly 17 is part of a disposable loading unit 16.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Application 2006/0016853 was considered.

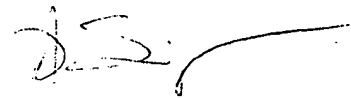
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michelle Lopez
Junior Examiner

A handwritten signature in black ink, appearing to read 'John Sipos', with a long horizontal flourish extending to the right.

John Sipos
Primary Examiner